WP(C) 5621/2006
BEFORE
THE HON'BLR MR JUSTICE HRISHIKESH ROY
Heard Mr MH Choudhury, learned counsel for the writ petitioners; Mr BJ Ghosh, le arned State counsel and Mr PK Kalita, learned counsel for the respondent No.4.

2. The petitioners' claim to be occupying some Government lands, have filed the present petition challenging the order dated 31.11.2006 in Case No.IRA(Udl) /06 passed by the learned Assam Board of Revenue, whereby the appeal filed by th e petitioners has been rejected on the ground of non-admissibility. By the very same order, the interim order passed earlier directing maintenance of status qu o over the land, has also been recalled by the Board.

3. Mr MH Choudhury, learned counsel for the petitioners submits that they h ave been in occupation of the land in question in Udalguri district, which is a Tribal belt area, for last 7 years by construction of their residential huts and when they were threatened with eviction from the land by notice dated 26.12.05 issued on behalf of respondent No.4, they approached the learned Assam Board of Revenue challenging the threat of eviction given to them. The said proceeding wa s initiated before the Board under the provisions of Regulation 147 of the Assam Land and Revenue Regulation, hereinafter referred to as the Regulation.

4. The Regulation provides for appeal to the Board of Revenue from the orde rs of authorities specified in sub-clause (a) of the Regulation.

5. Under sub-clause (a) of Regulation 147, an order passed by the Deputy Co mmissioner, Settlement Officer or Survey Officer could be challenged in a procee ding under Regulation 147(a) before the learned Board of Revenue.

6. It is contended on behalf of the writ petitioners that although there wa s no order passed by any of the authorities mentioned under Regulation 147(a), t he writ petitioners having been left with no choice when they were threatened wi th eviction by the notice issued on them on behalf of the respondent No.4 had to hurriedly approach the learned Board of Revenue to ensure that they are not evi cted from the land which has been under their occupation for several years.

7. Mr PK Kalita, learned counsel appearing for the respondent No.4, on the other hand, argued that Green Valley Tea Firm has been constituted exclusively b y tribal people. Referring to the affidavit, Mr Kalita submits that respondent N o.4 applied on 23.4.98 to the SDO(Civil), Udalguri, Darrang for settlement of la nd measuring 604 Bighas for tea cultivation. Following recommendation of the Lan d Advisory Committee (BTC Area) in its meeting held on 28.3.2000, which approved the proposal for settlement of 155 Bighas, the Government of Assam by order dat ed 8.3.2001 made a settlement of 155 Bighas of land covered by Dag No.2 of villa ge Sarbaherua under Pub-Dalgaon Mouza in Dalgaon Circle in favour of respondent No.4 i.e. Green Valley Tea Firm.

8. Following the settlement made in their favour, the respondent No.4 depos ited the premium amount quantified at Rs.3,35,425/- with the Under Secretary, Bo doland Territorial Council, Kokrajhar. Thereafter, the Deputy Commissioner-cum-S ettlement Officer, Udalguri district issued the General Myadi Kheraj Periodic Pa tta No.1 in fvour of respondent No.4 on 1.12.2005 for the aforesaid plot of land measuring 155 Bighas.

9. Mr Kalita contends that soon after taking over possession of the settled land, while the respondent No.4 was preparing to plant tea bushes, the writ pet itioners entered into the said land illegally and started cultivating and residi ng on the land. Thereafter, on receipt of the notice dated 26.10.2005 issued by respondent No.5, the writ petitioners approached the learned Board of Revenue ch allenging the Deputy Commissioner's order, whereby KP Patta was issued in favour

of respondent No.4 for the land in question.

10. It is contented on behalf of the Government by Mr BJ Ghosh, learned State counsel and also by Mr PK Kalita, learned counsel for the respondent No.4 that in respect of land falling within the tribal area the petitioners cannot have any right to get settlement.

11. However, learned counsel for the writ petitioners drew attention of the provisions of Regulation 163(c) to contend that even in respect of lands in tribal areas, the authorities, in the event of non-availability of surplus land, after meeting the requirement for tribal people, can give settlement of such excess land within tribal areas to non-tribal people.

12. Be that as it may, this court is not considering the entitlement of the petitioners to get settlement of land within tribal areas. The issue raised before this court is on the legality of the order passed by the learned Board of Revenue. It was contended by the respondents before the learned Board of Revenue that as the Deputy Commissioner, Udalguri had not issued any eviction order against the writ petitioners, the appeal filed by them under Regulation 147 is not maintainable. It was further contended that as the land in question falls within tribal block under Chapter-X of the Assam Land & Revenue Regulation, 1886, the appeal u/s 147 by the non-tribal people is also not maintainable and the said appeal is liable to be dismissed.

It was contended specifically on behalf of respondent No.4 that as the concerned land has already been allotted to respondent No.4, which is constituted entirely by the tribal people, the appeal filed by the writ petitioners is liable to be dismissed.

13. The learned Board of Revenue found on the basis of the report sent by the Deputy Commissioner, Udalguri that land in question falling within a Gerua tribal block under Udalguri has already been settled with respondent No.4 as per law and that the respondent No.4 had already taken over possession of the said land following the settlement made. It was also recorded by the learned Board of Revenue that the appellants/writ petitioners have been in possession of the land in question for the last 2/3 years without any valid authority and without also applying for settlement of the land. The learned Board also found that the appellants could not produce any materials to substantiate their claim that they have been in possession of the land in question for the last 25 years.

Having considered the fact that eviction notice against the appellants has been issued by the Deputy Commissioner and considering the fact that the land falls within tribal block under Chapter-X of the Assam Land & Revenue Regulation, the learned Revenue Board declined to entertain the appeal.

14. From the discussion of the factual averments of the case as noted above, as also the submissions made by the learned counsel for the parties, I am of the view that the justification given by the learned Board of Revenue for non-entertainment of the appeal filed by the writ petitioners is not liable to be interfered with by this court in exercise of powers under Article 226 of the Constitution of India. Accordingly, there is no merit in this writ petition and the same is dismissed.

15. No costs.